

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

DATE: June 24, 2008  
TO: Mayor, Council President and Members of the City Council  
FROM: City Attorney  
SUBJECT: Funding the City's Deferred Capital Asset Maintenance Backlog

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***Overview***

This memorandum addresses (1) the obligation of the City to provide for public services and public works, including infrastructure, (2) good practice guidelines for maintenance of infrastructure and other capital assets, (3) the current backlog of the City's deferred capital asset maintenance projects, and (4) options to fund the required capital investments.

***City Charter***

Charter Section 26.1 provides that it is the "obligation and responsibility of the City of San Diego to provide public works services, water services, building inspection services, public health services, park and recreation services, library services and other such services as may be desired." The services specified in Section 26.1 require significant capital assets and an essential component of providing these services is the regular maintenance of those capital assets.

Infrastructure is a component of capital assets. Accounting literature defines capital assets as

land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a year. Infrastructure refers to those long-lived capital assets that normally are stationary in nature. Unlike other capital assets, infrastructure is intended to exist indefinitely.<sup>1</sup> Examples of infrastructure assets include roads, bridges, drainage systems, water and sewer systems, dams, and lighting systems. If the City does not fund necessary maintenance, the condition of the City's capital assets is degraded, the useful life of its infrastructure is reduced and the cost of maintaining or replacing capital assets is increased.

### ***Good Practice Guidelines***

The GFOA recently approved recommended practices for municipal governments regarding capital asset maintenance and replacement planning<sup>2</sup> [GFOA Recommendations]. The GFOA Recommendations are worthy of City consideration and are as follows:

- Develop and maintain a complete inventory of capital assets which includes such information as engineering description, location, physical dimensions and condition, "as-built" documents, warranties, maintenance history, book value and replacement cost.
- Develop a policy requiring the periodic measurement of all existing capital assets.
- Establish condition/functional performance standards to be maintained for each component of capital assets.
- Develop financing priorities for capital maintenance/replacement which encourage a high priority for those capital projects whose goal is maintaining the quality of existing assets.

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<sup>1</sup> Governmental Accounting, Auditing, and Financial Reporting, GFOA

<sup>2</sup> Capital Maintenance and Replacement (2007), GFOA

- Allocate sufficient funds in the multi-year capital plan and annual operations budget for routine maintenance, repair and replacement of capital assets in order to extend the useful life of assets.
- Report annually on capital infrastructure including the following:
  - a) Condition ratings City-wide
  - b) Condition ratings by geographical area, asset class, and other relevant factors
  - c) Indirect condition data (e.g., water main breaks, customer complaints)
  - d) Replacement life cycle(s) by infrastructure type
  - e) Year to year changes in net infrastructure asset values
  - f) Actual expenditures and performance data on capital maintenance compared to budgeted expenditures performance data
- Report trends in infrastructure spending and accomplishments in the City's capital improvement program including trends in spending, replacement cycle, and other factors for each major infrastructure category.

The GFOA Recommendations, if implemented by the City, would serve several important functions, including assisting the City to comply with its obligations under Section 26.1 of the Charter. Not least, the GFOA Recommendations would assist the City in providing adequate annual budgeting for the regular maintenance of the City's capital assets, which would ensure that the City does not neglect its capital asset maintenance requirements in the future, thereby reducing the cost of maintaining or replacing City capital assets. If the City were to implement the GFOA recommendations, the City would be better able to assess which ongoing needs are regular maintenance that require annual pay-as-you-go funding and which obligations are capital in nature and therefore are appropriate for longer term financing. The City's deferred capital asset maintenance is estimated by the Mayor<sup>3</sup> to be in excess of \$800 million and the City must consider ways and means to address this backlog in order to fulfill its Charter obligations. A commitment now to adequately fund capital asset maintenance and replacement will end the

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<sup>3</sup> Mayor's Five Year Financial Outlook: 2009-2013.

practice of pushing maintenance into future years and help to extend the useful life of City capital assets.

### ***Deferred Maintenance Projects***

It is a testament to the state of the City's capital asset monitoring program that the City does not have firm numbers on the extent of its deferred capital asset maintenance backlog. It would be prudent for the City to initiate a comprehensive capital asset maintenance and replacement program in accordance with the GFOA Recommendations so the City can begin to address the backlog and to ensure that the City will be able to meet its obligations in the future. The quality and availability of the City's capital assets are essential to the health, safety, economic development and quality of life of the City and its residents. As noted above, the City has not met its obligation imposed by Charter Section 26.1 to maintain the City's assets over the long term, which has caused the City's capital assets to deteriorate further and faster than they otherwise would have. Acting now to address deferred capital maintenance and bring the City's capital assets back to an appropriate standard is only one component of the City's ongoing obligations.

Additionally, the City should not undertake any new capital improvement projects requiring general fund contributions without addressing the City's deferred maintenance backlog. The current practice of constructing new capital projects without providing for this maintenance is analogous to a person buying new shirts instead of laundering the old ones. The Mayor's proposed Fiscal Year 2009 budget identifies \$7.6 billion in capital improvement projects through fiscal year 2019, which includes continuing, new and future projects, the majority of which are

general fund projects. Much of this is unfunded. Again, before undertaking any new, discretionary projects, it would be legally prudent for the City to develop a plan to address its under-funded deferred capital asset maintenance.

### ***Structural Deficit***

Although the City is required to fund regular maintenance on a pay-as-you-go basis the City's structural deficit is an impediment to such funding. The structural deficit faced by the City is a result of the City's practice of increasing future liabilities without corresponding increases to revenue. Such deficits are considered to be structural because they exist even when a local economy is vibrant and they can only be addressed by explicit, direct government policies: either increasing revenues or decreasing expenditures. The City's structural deficit exists, in large part, because of the voluntary creation of unfunded liabilities without corresponding revenue increases, such as the debt associated with Qualcomm Stadium, Petco Park, and the Convention Center, and the granting of additional pension and retiree healthcare benefits. As an example, the City's pension and retiree healthcare contribution increased from \$39 million in fiscal year 1999 to \$212 million in fiscal year 2009. Similarly, in fiscal year 2009, the debt service on Qualcomm Stadium, Petco Park, and the Convention Center will be approximately \$31 million. In short, the City created \$243 million in additional liabilities with no additional funding sources to pay for these liabilities. The following table shows the difference between the City's annual

cost for these liabilities in Fiscal Years 1999 and 2009 as well as the total liabilities:

<u>Description</u>	<u>Annual Payments</u>		<u>Amount</u>
	<u>FY1999</u>	<u>FY2009</u>	<u>Outstanding</u>
Pension Contribution	\$30 million	\$162 million	\$1 billion
Retiree Healthcare	\$9 million	\$50 million	\$1 billion
Qualcomm Stadium	\$6 million	\$6 million	\$58 million
Petco Park	\$0	\$11 million	\$153 million
Convention Center	\$0	\$14 million	\$173 million

At the same time, the City has ignored certain liabilities, such as those imposed by Charter Section 26.1, which are mandatory in nature. Charter Section 99 requires the City to fund regular maintenance from current year revenues but the City's regular, as opposed to capital, maintenance obligations are so extensive that the City does not have sufficient annual revenues to fund this regular maintenance. If the City were able to reduce some of its larger liabilities by reducing its pension and retiree healthcare obligations or shifting the debt burden of Qualcomm Stadium, Petco Park, and the Convention Center to the Redevelopment Agency or the Centre City Development Corporation, the City might be able to adequately fund a capital asset maintenance and replacement program going forward. However, because of the size of the City's deferred capital asset maintenance backlog, it would be prudent for the City to consider debt financing for some portion of its deferred capital maintenance obligations.

### ***Funding Options***

The City may contract bonded indebtedness where the cost of constructing municipal improvements exceeds the City's ordinary annual income. However, the City may not incur any debt for any purpose that exceeds the City's annual income and revenue for such year without a

vote of the citizens of the City. Under Charter Section 99, the City cannot incur long-term indebtedness without voter approval and Charter Section 90 requires a two-thirds vote for bonded indebtedness. Article XVI, Section 18 of the California Constitution contains a similar provision.<sup>4</sup> Consequently, in order for the City to issue debt and spend funds in excess of the City's annual revenues it is necessary for the City Council to place a ballot measure before the voters; the next election in the City is in November 2008.

### ***General Obligation Bonds***

The City may, upon voter approval, issue general obligation bonds to finance the acquisition, construction or completion of any municipal improvement.<sup>5</sup> As discussed above, such projects must be capital in nature and the City may not use general obligation bonds to fund ordinary maintenance. (An analysis of the federal tax law requirements, prepared by Bond Counsel for the proposed deferred maintenance financing, is attached as Attachment A.) The process the City must follow in order to issue general obligation bonds is as follows: 1) the City Council must pass an ordinance or resolution by a vote of five members of the Council determining that the public interest or necessity demands such improvements; 2) at a subsequent meeting the City Council must adopt an ordinance by a two-thirds vote which places the bond proposition specifying the bond amount and the purposes of the bonds on the ballot; 3) the proposed bond measure must be approved by a two-thirds vote of the citizens; and 4) the City Council must pass

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<sup>4</sup> California Courts have recognized three exceptions to the constitutional debt limit but, in the opinion of the City Attorney, none of these exceptions would apply under these circumstances.


<sup>5</sup> The projects to be funded by the Mayor's proposed \$108 million deferred maintenance financing, which the City Attorney believes is not valid without a vote of the citizens, could be included in a general obligation bond financing, assuming they are capital in nature.

a resolution specifying the terms under which the bonds will be issued. A sample ordinance placing a bond measure on the November ballot is attached hereto as Attachment B.

***Conclusion***

The City has significant, Charter-mandated capital asset maintenance requirements that have not been adequately funded in the past. Moreover, the City does not have an adequate system, such as that recommended by the GFOA, to monitor its capital asset maintenance and replacement requirements. As a result, the City has a substantial backlog of capital asset maintenance. The City also has a structural deficit and does not have adequate general fund revenue to pay for the required capital asset maintenance out of current-year revenues. The City may issue debt in order to fund eligible capital asset maintenance and replacement projects but any such debt issuance would require a vote of the citizens. The City should implement a variety of capital maintenance and replacement policies to better manage its capital assets in the future. Finally, the City needs to address its deferred capital maintenance projects before implementing any new, discretionary capital projects.

MICHAEL J. AGUIRRE, City Attorney

By   
City Attorney



This memorandum sets forth certain of the principal federal tax law requirements that are applicable to an infrastructure financing, whether structured as a lease-leaseback financing or a general obligation bond financing pursuant to a two-thirds approving vote of the electorate.

**Governmental Bonds.** Federal tax law allows State and local governments (such as, the City of San Diego) to issue bonds that provide investors with interest income that is exempt from federal income tax. As a result, State and local governments can finance projects at lower interest rates because investors are willing to accept lower interest rates to obtain tax-exempt income. Tax-exempt bonds are issued to finance public-purpose projects, such as schools and roads, and quasi-public purpose projects, such as bonds issued on behalf of nonprofit charitable organizations and private for-profit organizations if the bond proceeds are used for certain specified activities. Tax-exempt bonds in which ninety percent or more of the proceeds are used by governmental entities are referred to as “governmental bonds.” “Private activity bonds” are bond issues in which either (i) more than ten percent of the proceeds are used by nongovernmental private entities and more than ten percent of the principal or interest is directly or indirectly paid from, or secured by, revenues from private trades or businesses, or (ii) more than five percent of the bond proceeds or \$5 million is used for loans to private persons. The interest on private activity bonds may nevertheless be tax-exempt if

such bonds comply with various federal tax restrictions and limitations and the proceeds of such bonds are used for certain activities specified in the Tax Code.<sup>1</sup>

The purpose of the City's proposed bond financing is to benefit the City (including related agencies and departments) and members of the general public. The bond proceeds are to be used by the City to finance various improvements to capital infrastructure owned and operated thereby. The security for the payment of debt service with respect to the proposed bond financing (i.e., the lease obligations) is general revenues of the City. The bond proceeds are not being loaned to or used by any private business. As such, the proposed bond financing will be treated for federal tax purposes as an issue of tax-exempt governmental bonds.

Since the proposed bond financing will not be treated for federal tax purposes as an issue of private activity bonds, none of the many rules applicable to private activity bonds (e.g., use of facilities financed, volume cap, public approval, issuance cost limitations, bond maturity limitation, alternative minimum tax, prohibition on acquisition of existing property, etc.) will apply to this financing.

Arbitrage limitation and rebate rules apply to all tax-exempt bond financings (i.e., both governmental bonds and private activity bonds) and primarily relate

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<sup>1</sup> Interest on private activity bonds is tax exempt if and only if the bonds are "qualified bonds." Private activity bonds are treated as qualified bonds if 95% or more of the net proceeds (i.e., proceeds less amounts used to finance a reasonably required reserve) are used to finance certain types of loans or facilities (including other property functionally related and subordinate thereto) and the bonds meet several tax restrictions such as limitations on overall volume, bond maturity and public approval requirements. Qualified private activity bonds include the following types of obligations: exempt facility bonds (which include private activity bonds issued to finance multi family residential rental property), qualified mortgage bonds, qualified small issue bonds and various other bonds issued for purposes of financing loans to students or to nonprofit charitable organizations. The federal tax rules and restrictions relating to the permissible uses of the proceeds of qualified private activity bonds and the types of facilities which may be financed thereby are beyond the scope of this memorandum.

to the limitations on the investment and expenditure of the bond proceeds. Thus, for example, federal tax law restricts the amount of arbitrage profits that may be earned and requires certain amounts to be paid to the federal government as “arbitrage rebate.” Governmental bonds issued by the City, however, may satisfy the six-month exception, the eighteen-month expenditure exception or two-year expenditure exception to the arbitrage rebate requirements (depending on the purpose and schedule of the expenditures made with the bond proceeds).

**Capital Expenditures.** The proceeds of the financing can be used to finance either capital expenditures or working capital expenditures (operating expenses). Generally, proceeds may be spent only on capital costs of facilities (and common costs of the financing, such as costs of issuance and a reserve fund). Once bond proceeds are allocated to an expenditure, the use and nature of any facility or improvement paid for with the bond proceeds is tracked for private activity bond purposes. If the purpose of the bond issue is to finance working capital expenditures, the Treasury Regulations provide that bond proceeds are spent only at times in which the issuer has no other moneys on hand available to cover those working capital expenses.<sup>2</sup> The proposed financing is to be used to finance only capital. See Hawkins Memo, footnote 1.

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<sup>2</sup> The general arbitrage rule is that proceeds used to finance working capital expenditures are spent only after there are no other remaining “available amounts.” Treas. Reg. §1.148-6(d)(3). This rule is generally referred to as the “proceeds-spent-last rule” and results in a substantial limitation on the ability to spend working capital as the amounts borrowed (including the investment earnings thereon) may not be considered spent unless the issuer actually experiences a cash flow deficit within the requisite time frame. By contrast, proceeds may be allocated to capital expenditures using “any reasonable, consistently applied methods, including proceeds-spent-first.” Treas. Reg. §1.148-6(d)(1). The regulations provide a series of exceptions to the “proceeds-spent-last” rule for de minimis capital expenditures, extraordinary items, and the payment of principal and interest on prior issues (*i.e.*, refundings). If any of these exceptions apply, the issuer may allocate bond proceeds to the expenditures even if other moneys would be “available” to make the expenditure.

Working capital is defined under the Treasury Regulations as “any expenditure that is not a capital expenditure.”<sup>3</sup> The Treasury Regulations note that current operating expenses generally are not capital expenditures. A “capital expenditure” is any cost of a type that, under general federal income tax principles, is properly chargeable to a capital account or would be so chargeable with a proper election. Examples include costs to acquire, construct, or improve land, buildings, and equipment. The regulations also state that whether an expenditure is a capital expenditure is determined at the time the expenditure is paid and that future changes in law do not affect that determination.<sup>4</sup>

**Other Replacement Proceeds.** Even though bond proceeds may be spent for working capital purposes, either under the proceeds-spent-last rule or under one of the exceptions described above, replacement proceeds may arise with respect to the working capital financing under Treas. Reg. §1.148-1(c)(4), which is the other replacement proceeds or “ORPs” rule. Essentially, this rule provides that, if an issuer has available amounts during the term of the issue, those available amounts will be treated as ORPs of the issue if the term of the issue is longer than is reasonably necessary for the governmental purposes of the issue. If this rule applies, the replacement proceeds are

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<sup>3</sup> Treas. Reg. §1.150-1(b).

<sup>4</sup> Code Sections 263 and 263A and the regulations and rulings thereunder provide some guidance as to general federal tax principles relating to capitalization of costs. In general, a capital asset must have a useful life in excess of one year. Often courts also have looked to whether a separate, identifiable asset is created to determine whether costs are capital costs, but the Supreme Court in *INDOPCO v. United States*, 503 U.S. 79 (1992), specifically stated that the creation or enhancement of a separate and distinct asset is not an exclusive test for identifying a capital asset. The regulations under Code Section 263 also list a number of sections of the Code that allow costs that might otherwise be deducted to be capitalized or that allow costs that might otherwise be capitalized to be deducted. These include, importantly, carrying costs under Section 266, which include interest costs during construction, or so-called “capitalized interest.” Because the regulations under Code Sections 148 and 150 treat costs that are capitalizable as capital costs, true capitalized interest is treated as a capital cost and not as working capital.

created at the beginning of each fiscal year in which the issue is outstanding longer than necessary in an amount equal to the available amounts at the beginning of that year.

Whether bonds remain outstanding longer than necessary to accomplish the governmental purpose is determined under Treas. Reg. §1.148-10. Treas. Reg. §1.148-10(a)(4) provides that one factor indicating bonds have been issued prematurely or remain outstanding too long is failure to qualify for a temporary period under Treas. Reg. §1.148-2(e)(2) (three-year temporary period for capital projects, which includes working capital expenditures to which the Treas. Reg. §1.148-6(d)(3)(ii)(A) rules apply), Treas. Reg. §1.148-2(e)(3) (13-month temporary period for “restricted working capital expenditures”, which means all working capital expenditures subject to the proceeds-spent-last rule), and Treas. Reg. §1.148-2(e)(4) (six-month temporary period for pooled financings). Treas. Reg. §1.148-10 also provides that one factor evidencing that bonds will remain outstanding too long is that they have a term exceeding the safe harbors against the creation of other replacement proceeds contained in Treas. Reg. §1.148-1(c)(4)(i)(B). For issues that finance restricted working capital expenditures (expenditures that are subject to the proceeds-spent-last rule), there is a safe harbor if the term of the issue is not longer than two years.<sup>5</sup>

For long-term, tax-exempt working capital financings (*e.g.*, deficit bonds), the proposed term of the financing must be carefully reviewed to determine whether the term exceeds what is reasonably necessary to accomplish the governmental purpose.<sup>6</sup>

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<sup>5</sup> TRANs (*i.e.*, tax or revenue anticipation notes) are further restricted by a 13-month maturity safe harbor, pursuant to Rev. Proc. 2002-31.

<sup>6</sup> The arbitrage regulations impose significant restrictions on long-term tax-exempt bonds for working capital purposes. Under the general arbitrage anti-abuse rule, bonds are taxable arbitrage bonds if the bonds both overburden the tax-exempt market and enable the issuer to exploit the difference between

The stated amortization must reflect the issuer's reasonable expectations as to its ability to retire the debt, based on all the information available. The existence of "available amounts" is determined on an annual basis and the issuer should account for such amounts in the context of avoiding an overburdening of the market. In the event available amounts arise following issuance of the bonds, various means of remediation may be utilized, including requiring the issuer to purchase bonds on the open market, setting up yield-restricted redemption accounts, and providing for some sort of extraordinary call provisions.<sup>7</sup>

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tax-exempt and taxable rates to obtain a material financial advantage. The arbitrage regulations provide that an action overburdens the tax-exempt bond market if it results in issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of bonds, based on all the facts and circumstances. This rule further provides that if bonds for working capital are outstanding beyond a two-year safe harbor period, that factor is evidence that the working capital bonds may be outstanding longer than necessary. Treas. Reg. §1.148-10(a). We believe, however, that these factors may be overcome by other factors, such as long-term financial distress.

<sup>7</sup> In the only significant private letter ruling on long-term working capital financing, in PLR 9424043 (March 21, 1994), the IRS addressed 30-year working capital bonds for a bankrupt public school district. The issuer reasonably expected to have no surplus available amounts for working capital for a 5-year period after the bond issue date. The IRS respected those expectations for that 5-year period, but was unwilling to respect any longer projections "given the inability to make meaningful specific financial projections over a span of so many years." The bonds were callable after five years. The IRS imposed an ongoing tax compliance mechanism that required the issuer to determine its surplus available amounts annually starting after five years and to apply any such surpluses to prepay bonds on the next interest payment date. The IRS concluded that the bonds did not violate the arbitrage overburdening test based on the issuer's long-term financial distress and the issuer's ongoing covenant to determine its surplus available amounts annually starting after five years and to apply any such surpluses to prepay bonds. In addition, the IRS concluded that the bonds would not create other replacement proceeds to the extent that the issuer applied these surpluses so determined. The key basis for the IRS's conclusions that the long-term working capital bonds neither overburdened the tax-exempt market nor created other replacement proceeds was the ongoing tax compliance mechanism to test future surpluses of available amounts and to apply them to reduce the burden on the tax-exempt market.

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SAN DIEGO ORDERING, CALLING AND PROVIDING FOR A MUNICIPAL BOND ELECTION FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY THE CITY OF SAN DIEGO DEFERRED INFRASTRUCTURE INVESTMENT MEASURE PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY FOR THE REPAIR, REPLACEMENT AND IMPROVEMENT OF CERTAIN DEFERRED INFRASTRUCTURE FACILITIES AND IMPROVEMENT PROJECTS; DECLARING THE ESTIMATED COST OF THE MUNICIPAL IMPROVEMENTS, THE AMOUNT OF THE PRINCIPAL OF THE INDEBTEDNESS TO BE INCURRED THEREFOR, AND THE MAXIMUM RATE OF INTEREST TO BE PAID THEREON; MAKING PROVISION FOR THE LEVY AND COLLECTION OF TAXES; FIXING THE DATE OF THE ELECTION AS NOVEMBER 4, 2008 AND THE MANNER OF HOLDING THE SAME; AND PROVIDING FOR NOTICE THEREOF.

WHEREAS, the City Council [City Council] of the City of San Diego, California [City] has determined that there has been an underinvestment in certain City infrastructure and improvements, and that it is necessary to make such investments in order to protect the safety and welfare of the residents of the City; and

WHEREAS, the City Council has determined that the public interest and necessity demand the repair, replacement and improvement of certain facilities and infrastructure projects [Public Capital Investment Projects], and that it is necessary and advisable to provide the funding for the Public Capital Investment Projects by means of the issuance of general obligation bonds; and

WHEREAS, Section 1(b) of Article XIII A of the California Constitution excepts from the general one percent (1%) of full cash value limitation those *ad valorem* taxes used to pay for

debt service of any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds (2/3) of the votes cast by voters on the proposition; and

WHEREAS, in the judgment of the City Council, it is advisable to call and provide for an election on the question of whether general obligation bonds shall be issued and sold and *ad valorem* taxes be levied for the object and purposes set forth below; NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of San Diego as follows:

Section 1.     Recitals. The above recitals are true and correct.

Section 2.     Ordering Election. A municipal bond election shall be and is hereby called and ordered to be held in the City of San Diego, California, on Tuesday, November 4, 2008, at which election shall be submitted to the qualified voters of the City the question of incurring general obligation bonded indebtedness of the City for the object and purpose set forth in the following measure:

MEASURE (A):

City of San Diego Deferred Infrastructure Investment Measure

Shall the City of San Diego repair, replace and improve certain deferred maintenance infrastructure investment projects, including the repair and replacement of streets, sidewalks, bridges, storm drains, public safety facilities, roof repairs, plumbing projects and other capital investment projects; by issuing \$[ ] of general obligation bonds at legal rates, and audits related to the expenditure of bond proceeds?

The estimated cost of the municipal improvements set forth in the Measure is \$[ ], including costs authorized pursuant to California Government Code Section



43610.1(a) and (b), which may be paid from the proceeds of the sale of the bonds. Proceeds of the bonds shall only be applied to the purposes set forth on Attachment 1 hereto, and not for any other purpose (except as provided herein), which attachment is hereby ordered to be printed in the voter pamphlet.

Section 3.     Submission to Qualified Electors. The Council does hereby submit to the qualified electors of the City at the municipal bond election the Measure set forth in Section 2 of this Ordinance, and designates and refers to the Measure in the form of ballot hereinafter prescribed for use at the election.

- (a) The municipal bond election shall be held and conducted, and the votes thereof canvassed, and the returns thereof made, and the result thereof ascertained and determined, as herein provided; and in all particulars not prescribed by this ordinance, the election shall be held as provided by law for the holding of municipal elections in the City.
- (b) All persons qualified to vote at municipal elections in the City upon the date of the election herein provided for shall be qualified to vote upon the measure submitted at the municipal bond election.
- (c) The polls at the polling places hereinafter designated shall be opened at 7:00 o'clock A.M. of election day and shall be kept open continuously thereafter until 8:00 o'clock P.M. of election day, when the polls shall be closed (except as provided in Section 14401 of the Elections Code), and the election officers shall thereupon proceed to canvass the ballots cast thereat.
- (d) The municipal bond election hereby called shall be consolidated with any other elections to be held in the City on Tuesday, November 4, 2008, all as required by

and pursuant to law; and the election precincts, polling places and officers of election within the City for the municipal bond election hereby called shall be set forth in the notice of election officers and polling places for the election to be published by the Registrar of Voters of the County of San Diego, as required by law, to which notice reference is hereby specifically made for a designation of the precincts, polling places and election officers of the municipal bond election hereby called. Only qualified voters of the City shall be permitted to vote at the municipal bond election.

- (e) On the ballots to be used at the municipal bond election, in addition to all other matters required by law to be printed thereon, shall appear the measure set forth in Section 2 hereof.
- (f) The Council shall confirm the canvass of the municipal bond election and shall cause to be spread upon its minutes a statement of the results of the municipal bond election as ascertained by the canvass at the first available Council meeting following receipt thereof.

#### Section 4.

- (a) The municipal bond election called for November 4, 2008 in the City of San Diego is hereby ordered consolidated with the Statewide General Election to be held on the same date. Within The City of San Diego the precincts, polling places and officers of the election for the General Statewide Election shall be the same as those provided for in the Statewide General Election.
- (b) The Registrar of Voters of the County of San Diego is hereby authorized to canvass the returns of the Municipal Bond Election and these elections shall be

held in all respects as if there were only one election, and within the City only one form of ballot shall be used. The City Clerk shall certify the results of the canvass of the returns of this Municipal Bond Election to the Council of the City of San Diego which shall thereafter declare the results of the election.

- (c) As required herein, this election shall be consolidated with the Statewide General Election, and since only one form of ballot is authorized, the method of voting upon this measure shall be as set forth in the Elections Code of the State of California, and the form of the measure as it is to appear on the ballot is as follows:

Measure A

Deferred Infrastructure Investment Projects

Shall the City of San Diego repair, replace and improve certain deferred maintenance infrastructure investment projects, including the repair and replacement of streets, sidewalks, bridges, storm drains, public safety facilities, roof repairs, plumbing projects and other capital investment projects; by issuing \$[ ] of general obligation bonds at legal rates, and audits related to the expenditure of bond proceeds?      YES      NO

- (d) An appropriate mark placed in the voting square or circle after the word "YES" shall be deemed an affirmation of the measure and be counted in favor of the adoption of the measure. An appropriate mark placed in the voting square after the word "NO" shall be deemed a negation of the measure and be counted against the adoption of the measure.
- (e) If the measure to incur general obligation bonded indebtedness submitted by this ordinance receives two-thirds of the votes of the qualified voters of the City voting on the measure, general obligation bonds of the City of San Diego in an amount not to

exceed the principal amount set forth in this Ordinance may be issued and sold by the City for the purposes set forth herein.

Section 5.     Bonds. The Council proposes to issue and sell general obligation bonds of the City, in one or more series, for the object and purpose, but not exceeding the amount, specified in the measure, if two-thirds of the qualified electors voting on such measure at the municipal bond election shall vote in favor of the Measure. The maximum principal amount of the bonds shall be \$[\_\_\_\_\_]. Any bond issued hereby shall mature not later than 40 years from the date of issuance, provided that the City may use a shorter maturity as the Council may from time to time determine is in the best interests of the taxpayers of the City.

The bonds shall bear interest at a rate not to exceed the maximum legal rate per annum, payable semiannually (except that interest for the first year after the date of the bonds may be made payable at the end of said year), except as may otherwise be permitted by law, and such rates shall be determined at or prior to the time of the sale of the bonds. The proceeds of the bonds shall be applied only to the specific purpose identified in the measure set forth in Section 2 of this Ordinance and shall be deposited into an account created for such purpose pursuant to Government Code Section 53410. The Mayor shall cause the Chief Financial Officer of the City to file with the City Council annually a report complying with the provisions of Government Code Section 53411.

The City Council shall cause to be conducted an annual, independent financial audit of the expenditure of the proceeds of the bonds issued hereby. Such annual audit shall be conducted on each series of bonds issued hereby.

Section 6.     Publication. The City Clerk is hereby directed, upon the passage and adoption of this ordinance, to publish the same once a week for two (2) weeks in the Daily

Transcript, a newspaper published less than six (6) days a week in the City. No other notice of the election hereby called need be given.

Section 7.     Effective Immediately. This ordinance shall be forthwith entered upon the minutes of the City Council and in the Ordinance Book of the City. This ordinance, being an ordinance calling and ordering an election, shall take effect from and after its final passage and approval. The City Clerk is hereby ordered and directed to send a certified copy of this Ordinance to the San Diego County Registrar of Voters no later than August 4, 2008.

Section 8.     Certification. The City Clerk shall certify the adoption of this Ordinance.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

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Brant C. Will  
Deputy City Attorney

MDB:jdf:BCW  
05/16/2008  
Or.Dept:[Dept]  
O-2008-157

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor